

**DEPARTMENT OF THE TREASURY
FEDERAL LAW ENFORCEMENT TRAINING CENTER
GLYNCO, GEORGIA 31524**

FLETC DIRECTIVE (FD)

NUMBER: 70-06.A

Subject: RATIFICATION OF UNAUTHORIZED
COMMITMENT

Date: 10-03-00
Sunset Review Date: 10-03-04

1. PURPOSE. This directive provides policy and responsibilities governing the ratification procedures for an unauthorized commitment. However, it should be noted that the practice of ratifying an unauthorized commitment is highly discouraged. Any action of this type could result in personal financial liability to the individual who made the commitment.

2. SCOPE. The provisions of this directive apply to all FLETC personnel. Participating Organizations (PO) should contact their Agency Procurement Office for appropriate procedures on ratification policy.

3. CANCELLATION. Memorandum from Charles F. Rinkevich, FLETC Director, subject: Unauthorized Commitment, dated March 9, 1994.

4. DEFINITIONS.

a. Unauthorized commitment means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. Commitment could include the issuance of letters of intent and arrangements for free vendor services or use of equipment with a promise or the appearance of commitment, that a contract, modification, or order will be made with that party.

b. Ratification means the act of approving an unauthorized commitment by an official who has the authority to do so.

c. Contracting Officer(s) are the only individual(s) who have the authority to

enter into (obligate funds) and sign a contractual action on behalf of the Government. The only exception is a Purchase Cardholder (credit card) who has limited obligation authority at the micro purchase limit (\$2,500 or \$2,000 for construction).

d. Ratifying Official is the individual who has the authority to approve an unauthorized commitment.

5. REFERENCES.

a. Federal Acquisition Regulation (FAR), Subpart 1.6--Career Development, Contracting Authority, and Responsibilities.

b. Department of the Treasury Acquisition Regulation (DTAR), Subpart 1001.6, subject as above.

c. FLETC Directive 70-06, Procurement Authority, dtd March 31, 1997.

6. RESPONSIBILITIES.

a. All FLETC Employees should be cautious when dealing with contractors to avoid an unauthorized commitment. If you are unsure of any given situation when dealing with a vendor, either in a purchasing or contractual role, you are advised to seek assistance from the Procurement Division's contracting staff prior to proceeding.

b. The Individual who makes an unauthorized commitment should notify their supervisor once the commitment is made. The elements required to justify the ratification are outlined in FAR Part 1.602-3, DTAR 1001.602-3, and under paragraph 7 of this Directive, "Policy".

c. The Supervisor and the individual will prepare a memorandum to request ratification.

d. The Associate Director within the individual's supervisory chain of command will be included in the routing of the memorandum requesting ratification.

e. The FLETC Legal Counsel is required to review for recommendation of

approval by the ratifying official for all monetary violations that exceed \$10,000 (ten thousand dollars).

f. The Procurement Division (PRO) will provide the individual who made the commitment any documentation received in that office, to begin or be included in the ratification request. The PRO also provides assistance to the FLETC staff regarding contractual issues, questions, etc. as needed.

g. The Ratifying Official is the official who has the authority to approve an unauthorized commitment. Unauthorized commitments up to the simplified acquisition threshold (currently \$100,000) may be ratified by the Bureau Chief Procurement Officer (BCPO) in writing. Unauthorized commitments exceeding the simplified acquisition threshold must be reviewed and approved by the Senior Procurement Executive (SPE) at the Treasury Departmental offices.

h. A Contracting Officer is an individual who has a written warranted authority to obligate funds on behalf of the Government. This individual will review the unauthorized commitment and make determinations based on the policy guidance as stated in 7c(1) - (5). Upon approval by the ratifying official, the Contracting Officer will complete the contractual steps necessary in order to authorize payment.

7. POLICY.

a. A memorandum will be prepared in sufficient detail to explain the events which resulted in the unauthorized commitment. The memorandum will be routed for signature through the appropriate chain of command as follows:

(1) The individual who made the unauthorized commitment must notify their supervisor once they are aware of or have cause to believe that an unauthorized commitment has occurred.

(2) The employee and the employee's supervisor will contact the Chief, PRO, for guidance and prepare the action memorandum if it is determined to be an unauthorized commitment.

(3) Once the memorandum is completed, it should be routed through the chain of command, to include the appropriate Associate Director, to the

Chief, PRO. If the monetary violation exceeds \$10,000, then the memorandum shall also be routed through the FLETC Legal Counsel office.

(a) Should the PRO become aware of the unauthorized commitment, prior to the individual who made the commitment becoming aware of it, the PRO will forward information to that individual. The individual should then prepare the memorandum as indicated above.

(b) The memorandum should be prepared and routed in a timely manner, generally within ten working days after awareness of the action. Any delay in the ratification's approval and payment to the contractor could result in a claim by the contractor for payment. Payments arising under ratification or claims may also be subject to interest penalties under the Prompt Payment Act. Such claims are processed in a different manner than from the ratification. The claims process is addressed under FAR Subpart 33.2, Disputes and Appeals. Legal advice should be sought by the "interested parties".

(c) In the event all documentation is not provided or is not provided in enough detail so as to make a determination for approval by the ratifying official, the PRO will return the memorandum to the originating office for further clarification.

b. The memorandum shall contain the following:

(1) The name of the individual who made the unauthorized commitment;

(2) The number of times that this individual has made unauthorized commitments;

(3) A statement indicating that corrective action has been taken to preclude any recurrence, with an explanation of the corrective action;

(4) Relevant facts about the commitment and any documents concerning or supporting the commitment (i.e., contractor quote, contractor invoice, other support documentation, etc.);

(5) A justification for the ratification (in lieu of a settlement between the

vendor and the individual making the unauthorized commitment). This justification will describe the supplies or services obtained and what benefit the Government derived from acceptance of such supplies/services. This justification should be substantial and well documented in supporting the unauthorized commitment. It shall also include a price for the supplies or services and the basis for accepting the vendor price as fair and reasonable;

(6) A statement that the purchase requisition (PR) or funds were available at the time the unauthorized act occurred and that funds are currently available in the amount of the commitment (provide a PR with this memorandum) including certification of availability of funds from the Budget Division.

c. After receipt of the memorandum in PRO, the Contracting Officer will provide a determination on the following:

(1) Whether the resulting commitment would otherwise have been proper if made by an appropriate contracting officer;

(2) Whether the unauthorized commitment price is fair and reasonable;

(3) Whether the ratifying official has the authority to enter into this contractual agreement based on the threshold of the unauthorized commitment;

(4) Whether the ratification is in accordance with any other limitations prescribed under agency procedures;

(5) If required, FLETC Legal Counsel concurrence is obtained.

The ratification memorandum facts and documentation, along with the Contracting Officer's determinations, will be reviewed by the ratifying official for approval.

d. When the ratifying official has approved the action, the Contracting Officer will finalize the action which will authorize payment.

e. In the event a request for ratification of an action is disapproved, the Chief, PRO, will return the memorandum to the supervisor of the individual

with an explanation of the disapproval. The individual may be personally liable for any necessary payments to the contractor if the ratification is denied.

8. OFFICE OF PRIMARY INTEREST. Procurement Division, Office of Planning and Resources.

W. Ralph Basham
Director